No. 147

JUN 12 1940

CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1939.

JOHN R. LONGO,
Petitioner,

against

THE STATE OF NEW JERSEY,
Respondent.

PETITION AND BRIEF IN SUPPORT OF APPLICATION FOR WRIT OF *CERTIORARI.*

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JOHN R. LONGO,
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THE STATE OF NEW JERSEY,
Respondent.

PETITION FOR WRIT OF *CERTIORARI*.

May it Please the Court:

The petition of John R. Longo respectfully shows to this Honorable Court:

A.

Summary Statement of Matters Involved.

1. Petitioner was indicted by the Hudson County (New Jersey) Grand Jury for an alleged violation of the New Jersey Election Laws (R. 2, 10), and on that indictment was brought to trial before a petit jury (R. 4, 10).

2. Prior to the commencement of the trial, *voir dire* examination was had of the prospective petit jurors (R. 2, 3, 13), four of whom testified falsely on that examination (R. 3, 13, 14, 15, 18, 22-30, 33-35).

3. By reason of that false testimony, it did not appear that any of those four jurors was subject to challenge for cause, nor that there was any reason or need for their

peremptory challenge, and accordingly none of those four prospective jurors was challenged. All of them sat as jurors in the trial, and participated in the verdict of guilty subsequently rendered against petitioner (R. 4, 10).

4. Subsequent investigation disclosed the falsity of said answers. Petitioner thereupon, after the rendition of the verdict of guilty, but prior to the pronouncement by the Trial Court of the judgment of conviction, presented to the Trial Court a verified petition for new trial, alleging, *inter alia,* the foregoing grounds (R. 4-5, 10-35).

5. In opposition to that petition, affidavits were filed on the part of the State of New Jersey (R. 36-50), including the affidavits of the four jurors in question (R. 41-42, 44, 47, 48-50). These affidavits did not contain a denial of the charge that the testimony on the *voir dire* was false. They in effect admitted the falsity in some particulars, and in other particulars failed to meet the charge. [1]

6. The petition for new trial was denied (R. 51), although the petition presented an uncontroverted case for its allowance. Application for *certiorari* to review that denial was made to the Chief Justice of the New Jersey Supreme Court, but was denied by him (R. 52). Similar application was made to the entire court, but was denied (R. 55). An appeal was thereupon taken to the New Jersey Court of Errors and Appeals (R. i).

6. Petitioner's contention was that each juror proved to have sworn and testified falsely on the *voir dire* exam-

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[1] See analysis of testimony in the brief, *infra,* under "Statement of the Case".

ination as to his fitness to serve on the trial jury, was thereby disqualified, and that by reason of the participation of those jurors in the trial, petitioner was deprived of liberty and property without due process of law, in violation of the Fifth Amendment, and was deprived of liberty and property without due process of law, in violation of the Fourteenth Amendment, and was denied the equal protection of the laws, in violation of the Fourteenth Amendment, of the United States Constitution.

7. The claims of constitutional right were advanced in the petition for new trial (R. 20), in the application to the Chief Justice of the New Jersey Supreme Court for a writ of *certiorari* (R. 8, pars. H, I, J) [2], in the application to the New Jersey Supreme Court for a writ of *certiorari* (R. 8, pars. H, I, J) [2], and in the New Jersey Court of Errors and Appeals[3], the highest court of that state. The latter court affirmed the denial of the application for the writ, mention-

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[2] The affidavit in support of and constituting the application to the Chief Justice of the New Jersey Supreme Court was not required, under New Jersey practice, to be filed, in view of the denial of that application. The affidavit, re-sworn, was later presented to the entire Court, and was there filed. This is the affidavit appearing in the record below, pp. 2-51.

[3] Under New Jersey practice, the only ground for reversal is that "the Court below erred". Hence, no detailed specification of grounds appears in the Notice (R. i). That form of Notice preserves all the grounds of appeal previously urged. The appropriate section of the brief filed with the Court of Errors and Appeals is annexed hereto as an Appendix and shows that the constitutional questions were not abandoned.

ing in its opinion that a federal constitutional question had been raised.

8. The question is thus presented whether the above-enumerated rights, guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, permit a defendant in a criminal proceeding to be tried by jurors who have sworn and testified falsely on their preliminary examination as to their fitness to serve.

B.

Reasons Relied on for Allowance of the Writ.

1. The New Jersey Court of Errors and Appeals has decided federal questions of substance not heretofore determined by this court, to wit: whether a state court may pronounce judgment of conviction in a criminal case in which trial jurors have testified falsely during a preliminary judicial inquiry into their fitness to serve as jurors:

(a) consistently with the due process clause of the Fifth Amendment.

(b) consistently with the due process clause of the Fourteenth Amendment; and

(c) consistently with the equal protection of the laws clause of the Fourteenth Amendment.

2. The Court decided the aforesaid federal questions of substance in a way probably not in accord with applicable decisions of this Court.

3. The case is one of peculiar gravity and general importance. Basic constitutional rights are suspended if by

false testimony persons who are biased and partial may be permitted to sit as jurors in criminal cases, and if verdicts of guilty rendered by such jurors may not, upon timely discovery of the falsity, be set aside.

C.

Prayer for Writ of Certiorari.

Wherefore, your petitioner respectfully prays that a writ of *certiorari* be issued out of and under the seal of this Honorable Court, directed to the Court of Errors and Appeals of the State of New Jersey, commanding that Court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 52, October Term, 1939, *In the Matter of the Application of John R. Longo to the New Jersey Supreme Court for a Writ of Certiorari;* that said decree of said Court of Errors and Appeals be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem just and proper; and your petitioner will ever pray.

JOHN R. LONGO,
Petitioner.

By ABRAHAM J. ISSERMAN,
Counsel for Petitioner.